

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN PAUL BRENNAN

Appeal 2006-2708
Application 09/824,454
Technology Center 1700

Decided: July 30, 2007

Before EDWARD C. KIMLIN, THOMAS A. WALTZ, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-5 and 8. Claim 1
is illustrative:

1. A multi-layer nonwoven web suitable for use as a wet wipe, the web comprising:
 - (a) a first carded fibrous outer layer comprising from about 10% to about 60% conjugate fiber, from about 20% to about 65% cellulosic fibers;

- (b) a fibrous inner layer comprising from about 10% to about 60% conjugate fiber, from about 10% to about 90% cellulosic fibers, said inner layer bonded at discrete bond sites to said first outer layer in a face to face relationship; and
- (c) a second carded fibrous outer layer comprising from about 10% to about 60% conjugate fiber, from about 20% to about 65% cellulosic fibers, said second fibrous outer layer bonded at discrete bond sites to said inner layer in a face to face relationship.

The Examiner relies upon the following reference in the rejection of the appealed claims:

Cohen

US 5,505,719

Apr. 9, 1996

Appellant's claimed invention is directed to a multi-layer nonwoven web that is suitable for use as a wet wipe comprising a fibrous inner layer that is bonded to first and second outer layers in a face-to-face relationship.

Appealed claims 1, 2, and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cohen. Claims 3-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen.

We have thoroughly reviewed the respective positions advanced by Appellant and the Examiner. In so doing, we concur with Appellant that the Examiner has failed to make out a prima facie case of anticipation or obviousness for the claimed subject matter. Accordingly, we will not sustain the Examiner's rejections.

The fatal flaw in the Examiner's rejections is that Cohen fails to describe an inner layer that is bonded in a face-to-face relationship with two outer layers. Indeed, no one inner layer of Cohen is bonded to both of the

outer layers. The absorbent structure of Cohen comprises a plurality of distinct, planar regions between the outer layers (see a discussion of the separate and distinct second and third layers at col. 6-7 of the reference). Although the second and third layers of Cohen may comprise the same or similar components, the fact remains that they are distinct in nature.

It is the Examiner's position that "[t]he second and third layers, [of Cohen] in combination, are analogous to the inner layer claimed by Applicant" (Answer 3, last para.). However, whether there is an analogy between Cohen's second and third layers and the presently claimed inner layer is of no moment. To sustain a rejection under 35 U.S.C. § 102 a reference must provide an identical description of all the claimed features.

The Examiner submits that "[t]he present impasse raises a question of semantics" (Answer 5, last para.). But no semantical analysis can result in an inner layer of Cohen being bonded to both outer layers. Also, we find no merit in the Examiner's rationale that "'inner' layer(s) are any and all layers between 'outer' layers" (*id.*). We find no factual basis for interpreting the presently claimed "inner layer" as comprising a plurality of layers, and the Examiner has apprised us of none.

Also, while the Examiner cites the "comprising" language of the appealed claims and states that "the preamble 'multilayer' structure, encompasses structures with more than three layers" (Answer 6, second para.), the claim nevertheless requires an inner layer to be bonded to both outer layers.

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Since claims 3-5 are dependent upon claim 1 and include all the limitations therein, it follows that the Examiner's § 103 rejection of claims 3-5 must fall as well.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner's rejections.

REVERSED

clj

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